IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 18TH OCTOBER 2006 / 26TH ASWINA 1928

OP.No. 5262 of 2003(B)

PETITIONER:

P.C.ABDULLA, S/O. P.C.MOHAMMAD,
AGED 35 YEARS, P.H.C. ROAD, KUMBLA,
KOIPADY VILLAGE, KASARAGOD DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:
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1. THE SECRETARY,
KUMBLA GRAMA PANCHAYAT, KUMBLA, KASARAGOD DIST.

2. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF LOCAL ADMINISTRATION,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.KODOTH SREEDHARAN
R2 BY G.P. SRI. GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 9212 OF 2003 IN OP 5262 OF 2003

DISMISSED

18.10.2006 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF AGREEMENT DATED 30.4.2002 EXHIBITED BETWEEN THE PETITIONER AND THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF RECEIPT NO. 39 DATED 20.2.2001 FOR DEPOSIT OF RS. 2500/- FOR PARTICIPATION IN AUCTION OF THE PANCHAYAT STALL.

EXT. P3 TRUE COPY OF THE RECEIPT NO. 29 DATED 24.3.2001 DEPOSITING AN AMOUNT OF RS. 31,250/- TOWARDS THE ADEPOSIT FOR MINI STALL NO.X/1249 B.

EXT.P4 TRUE COPY OF RECEIPT NO. 69 DATED 2.5.2001 FOR THE PAYMENT OF RENT FOR THE MONTH OF APRIL, 2001

EXT.P5 TRUE COPY OF THE RECEIPT NO. 98 DATED 26.5.2001 FOR THE PAYMENT OF RENT FOR THE MONTH OF MAY 2001

EXT.P6 TRUE COPY OF THE RECEIPT NO. 75 DATED 26.6.2001 FOR THE PAYMENT OF RENT FOR THE MONTH OF JUNE 2001

EXT.P7 TRUE COPY OF THE RECEIPT NO. 29 DATED 26.7.2001 FOR THE PAYMENT OF RENT FOR THE MONTH OF JULY 2001

EXT.P8 TRUE COPY OF RECEIPT NO. 53 DATED 4.9.2001 FOR PAYMENT OF RENT FOR THE MONTH OF AUGUST, 2001

EXT.P9 TRUE COPY OF RECEIPT NO. 73 DATED 9.8.2001 FOR THE PAYMENT OF RENT FOR THE MONTH OF SEPTEMBER 2001

EXT.P10 TRUE COPY OF RECEIPT NO. 95 DATED 10.5.2002 FOR PAYMENT OF RENT FOR THE MONTH OF OCTOBER, 2001 TO JANUARY 2002

EXT.P11 TRUE COPY OF RECEIPT NO. 2 DATED 14.5.2002 FOR PAYMENT OF RENT FOR THE MONTH OF FEBRUARY 2002

EXT.P12 TRUE COPY OF THE BILL DATED 15.5.2001 ISSUED BY M/S. SARJJAL ENGINEERING WORKS, KASARAGOD FOR CHARGES FOR FIXING THE ROLLING SHUTTER TO THE SHOP.

EXT.P13 TRUE COPY OF THE RECEIPT NO. 9314 DATED 18.8.2001 TOWARDS THE CHARGES FOR GIVING ELECTRICITY CONNECTION.

EXT.P14 TRUE COPY OF THE REPRESENTATION DATED 25.7.2002ISSUED BY THE PETITIONER TO THE FIRST RESPONDENT.

EXT.P15 TRUE COPY OF THE LEGAL NOTICE DATED 1.10.2002 ISSUED BY PETITIONER'S LAWYER.

EXT.P16 TRUE COPY OF THE ACKNOWLEDGEMENT DATED 25.10.2002 ISSUED BY THE FIRST RESPONDENT.

EXT.P17 TRUE COPY OF THE REPLY LETTER DATED 12.11.2002 ISSUED BY THE LAWYER FOR THE PANCHAYAT.

EXT.P18 TRUE COPY OF THE RR DEMAND NOTICE DATED 7.10.2002

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 5262 OF 2003

Dated this the 18th day of October, 2006

JUDGMENT

Petitioner is challenging revenue recovery proceedings for recovery of an amount of Rs. 21629/- stated to be arrears of rent due from the petitioner to the first respondent-Panchayat for the period from June to October, 2002. I have heard counsel appearing for the petitioner and counsel appearing for the first respondent-Panchayat. Even though lease was for a period of three years, petitioner, on account of heavy loss, surrendered the building on 25.10.202. Admittedly, security deposit of Rs. 22,000/- and advance rent of Rs. 6,750/- was maintained by the panchayat. In the normal course, Panchayat should have adjusted the rent arrears against advance payments. However, admittedly, this was not done and recovery proceedings were initiated against the petitioner. Petitioner has a case that shop room was given without shutters and electricity connection. Petitioner admittedly fixed rolling shutters, took electricity connection and fixed back-door for the building. Obviously these are required

amenities to carry on business in the shop and Panchayat has not raised any objection against all these improvements done by the petitioner. Petitioner's case is that petitioner is entitled to cost of these improvements. Counsel for the Panchayat on the other hand contended that Panchayat has not undertaken to pay any such cost to the petitioner, which has been done by him voluntarily. I am unable to accept the contention of the Panchayat because without a shutter no one can occupy a building for any useful purpose. After surrender of the building, admittedly, the Panchayat let out the building to another person on rent. Therefore Panchayat is the beneficiary of the improvements done by the petitioner to the shop room such as fixing of shutters, and the electricity installation got done by him. Counsel for the petitioner submitted that total cost of fixing the rolling shutter was Rs. 5678/- and for electric installation he has spent Rs. 1400/-. If Panchayat had got these things done certainly cost would have been more at least for fixing rolling shutters because of the formalities involved in inviting tenders and awarding work based on competitive price. So far as back door is concerned, I do not think petitioner is

entitled to any compensation because it is not required for carrying on business in the shop room. Petitioner is also challenging penal rate of interest charged for the belated payment of arrears. Having regard to the contentions raised and since the lease is terminated, O.P. is disposed of with the following directions. Panchayat is directed to adjust the arrears of rent for five months, that is from June to October, 2002 from the security and advance rent and demand interest for the belated payment of rent for every month at the rate of one and a half per cent per month, settle the account and refund the excess from out of deposit and together with it, Rs. 5678/- towards charges for fixing rolling shutters and Rs. 1400/- for taking electric installation. There shall be a direction to the Electricity board to convert the installation to the name of the Panchayat or in the name of the new tenant after treating the payment of deposits made by the petitioner as done on behalf of the Panchayat. Since nothing is due from the petitioner, recovery proceedings will stand quashed with direction to the first respondent to settle the liability of the petitioner as above and grant eligible refund to the petitioner within a period of one month from the

date of production of a copy of this judgment by the petitioner. First respondent will produce a copy of this judgment before the Electricity Board for changing the name of consumer to the name of the Panchayat.

O.P. is allowed as above.

(C.N.RAMACHANDRAN NAIR)
Judge